

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

DAVID LYNN RUTLEDGE §  
v. § CIVIL ACTION NO. 9:10cv48  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner David Rutledge, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Jackson complains of a disciplinary case which he received for refusing to obey an order. He asserted that the disciplinary report was falsified, the charging officer's testimony at the hearing, which was taken by phone, was "barely audible," the inmate witness' statement was not considered, and the charging officer, who is black, is biased against white prisoners such as himself.

The Magistrate Judge ordered the Respondent to answer, and received copies of the state records. Upon review of the pleadings and records, the Magistrate Judge recommended that the petition be dismissed. The Magistrate Judge determined that the second and third claims were procedurally defaulted and that none of the claims contained any merit. Rutledge has filed objections to the Report.

In his objections, Rutledge asserts that the charging officer falsified the disciplinary report because all of the inmates in the hallway, not just him, were yelling and hollering, and that his

witness, who is black, made a statement to the effect that Rutledge was singled out because of his race. Rutledge says that he was not afforded the opportunity to be heard and to present witnesses, as shown by the fact that he was found guilty of the charges; he complains that the hearing officer relied on the report and testimony of the charging officer, and that his counsel substitute told him that his witness' testimony was "no good." Rutledge questions whether the charging officer's report and testimony is "some evidence" and says that "all issues are debatable." His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner David Rutledge is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 10 day of September, 2010.



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Ron Clark, United States District Judge